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Supreme Court of the United States

OCTOBER TERM, 1956

No. 247

THE BRITISH TRANSPORT COMMISSION,
Petitioner,

vs.

UNITED STATES OF AMERICA, as owner of the U. S. N. S. HAITI VICTORY, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE INTERVENING CLAIMANTS

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Opinions Below

The memorandum opinion of the District Court (R. 58) denying to the intervening claimants the right to implead the petitioner is not reported. The District Court opinion (R. 64-71) by which the United States, as owner of the HAITI VICTORY, was exonerated from liability for the collision is reported at 131 F. Supp. 712. The opinion of the Court of Appeals (R. 77-88) is reported at 230 F. 2d 139.

Jurisdiction

The decree of the United States Court of Appeals for the Fourth Circuit (R. 88-89) was entered February 13, 1956. Time for the filing of the petition for a writ of certiorari was extended to July 12, 1956, by order of the

Chief Justice dated April 10, 1956. The petition for a writ of certiorari was filed July 11, 1956. It was granted by order filed October 8, 1956 (R. 90), but limited to the single question stated below. Jurisdiction of this Court rests upon 28 U. S. C. § 1254(1).

Statutes and Rules Involved

The applicable provisions of the Limitation of Liability Act and of this Court's Admiralty Rules are reproduced at pages 44 to 50 of the appendix to the petitioner's brief.

Question Presented

The United States, owner of the HAITI VICTORY, which was in collision with the British Transport Commission ferry DUKE OF YORK, commenced limitation-of-liability proceedings in the United States District Court for the Eastern District of Virginia (R. 1). Thereafter a monition (R. 11) was issued against all persons claiming damages occasioned by the collision, pursuant to the provisions of Rule 51 of the Rules of Practice in Admiralty and Maritime Cases. The British Transport Commission filed its claim (R. 22-24) and its answer to the limitation petition (R. 24-28), that answer bringing to issue the matter of liability for the collision. Thereafter various death, personal injury and baggage claimants were granted leave (R. 34), subject to further order of the court, to file petitions impleading the British Transport Commission under the authority of Admiralty Rule 56, to respond to those claimants in damages for their losses resulting from the collision. The District Court thereafter disallowed the impleading petitions (R. 58-59).

In its order allowing certiorari (R. 90), this Court directed that review of the judgment of the Court of Appeals

for the Fourth Circuit would be limited to the first question presented by the petition:

> "The first question presented is whether other claimants in the proceeding may implead the Commission, under the alleged authority of Admiralty Rule 56, to respond to them in damages for losses suffered by them in the collision."

These claimants agree with the suggestion of the United States that the question stated presents the broad issue whether cross-claims under Admiralty Rule 56 are available generally in admiralty limitation and exoneration proceedings.

Statement

The claims asserted in this litigation result from a collision between the U.S.N.S. HAITI VICTORY and the Steamship DUKE OF YORK in the North Sea on May 6, 1953.

Following the collision the United States of America, as owner of the HAITI VICTORY, in due course, filed a petition for limitation of or exoneration from liability in the United States District Court for the Eastern District of Virginia, Norfolk Division.

Among the claimants who intervened and filed claims in this proceeding was the British Transport Commission, owner of the Steamship DUKE OF YORK, in which it asserted a substantial claim for the damage done to the DUKE OF YORK. Various other claims were filed, including those on behalf of passengers on the DUKE OF YORK who were injured and on behalf of the estates of passengers on the DUKE OF YORK who were killed as result of this collision and for loss of baggage and personal effects.

Subsequent thereto a number of these claimants filed petitions under the 56th Admiralty Rule impleading the co-claimant, British Transport Commission.

On July 2, 1954, the District Court by its unreported memorandum opinion denied the right of those claimants to so implead the British Transport Commission, and on May 12, 1955, an order was entered by the Court to this effect.

On June 2, 1955, the District Court entered its final decree exonerating the United States of America, as owner of the HAITI VICTORY, from any and all liability arising out of the collision.

The majority of the claimants, with the exception of British Transport Commission, excepted to and appealed from the decree of the District Court dated May 12, 1955, denying the right of the various claimants to implead the British Transport Commission.

On February 13, 1956 the Court of Appeals for the Fourth Circuit filed its decision affirming the decree of the District Court exonerating the United States as owner of the HAITI VICTORY from liability arising out of the collision, but reversing the Court with regard to its order denying the petitions of these various claimants to implead the British Transport Commission under the 56th Admiralty Rule to respond to those claimants for the damages suffered.

Petitions for writs of certiorari were filed by the individual claimants and by the British Transport Commission—by all with respect to the collision decree and by the Commission with respect to the reversal by the Court of Appeals of the order as to the impleading petitions. The petitions as to collision liability were denied; that with regard to the single question of impleader under Admiralty Rule 56 in the limitation proceeding, as stated above, was granted.

Summary of Argument

An admiralty court sits as a court of equity and, having once assumed jurisdiction over a limitation action, has power

to decree relief with respect to all parties before it. It may determine not only the rights that exist between the limitation petitioner and the several claimants but also the rights as among those claimants. From practical and equitable standpoints, it would work undue hardships on the intervening claimants herein if their rights against the British Transport Commission should not be determined in this proceeding.

Argument

From an examination of the authorities it appears that this is a case of first impression. While there have been various cases involving the right of a petitioner in a limitation-of-liability proceeding to implead a claimant, and the right of a claimant or a petitioner to bring in a third party, there have been no cases that we have been able to find that involve the precise issue here, to-wit: Whether one co-claimant in a limitation-of-liability proceeding can implead another co-claimant under the provisions of the 56th Admiralty Rule.

The limitation-of-liability proceeding is the administration of equity in an admiralty court. It looks to a complete and just disposition of all matters in dispute. Both equitable considerations and practical considerations lead to the conclusion that the right of a claimant to a limitation fund to implead under Rule 56 a co-claimant in a limitation proceeding should be permitted.

The admiralty court sits as a court of equity—a fact recognized by the Court of Appeals in its opinion, 230 F. 2d at 144. See *Morrison* v. *The District Court*, 147 U. S. 14; *Hedger Transportation Corp.* v. *Gallotta*, C. A. 2, 145 F. 2d 870; *In re Curtis Bay Towing Co.*, D. C. E. D. Pa., 63 F. Supp. 72.

Having once assumed jurisdiction over a limitation action, the admiralty court has power to decree relief with

respect to all parties before it. That view was clearly stated by this Court in *Hartford Accident and Indemnity Co. v. Southern Pacific Co.*, 273 U. S. 207. There a value stipulation had been posted by an indemnity company in respect to a limitation petition, and, after the court proceedings and full hearing of the issue of entitlement of the petitioner to limit liability, the petition was denied. This Court held that despite the denial of the petition the court below had acquired jurisdiction by virtue of the filing of the petition and consequently was empowered to decree full relief:

> "It is quite evident from these cases that this court has by its rule and decisions given the statute a very broad and equitable construction for the purpose of carrying out its purpose, and for facilitating a settlement of the whole controversy over such losses as are comprehended within it, and that all the ease with which rights can be adjusted in equity is intended to be given to the proceeding. It is the administration of equity in an admiralty court. * * * The proceeding partakes in a way of the features of a bill to enjoin the multiplicity of suits, a bill in the nature of an interpleader, and a creditor's bill. It looks to a complete and just disposition of a many-cornered controversy." 273 U. S. at 215-216.

To the same effect is the determination of the Court of Appeals for the Second Circuit in *The Adah*, 258 F. 377, which held that those parties to a limitation proceeding who should appear voluntarily or otherwise and join issues with the petitioners would be bound by the decree.

The Court of Appeals in its reversal of the District Court on this point relied in part on that decision of the Second Circuit. There the owner of a harbor deck scow chartered it to one Jacobus to be used to lighter ore from alongside a steamer. The ore was owned by Beer, with whom Jacobus contracted to transport the ore from the vessel to its destination. Beer engaged the stevedoring

concern of Brady to perform the unloading. As the loaded scow was being moved from the steamer, she overturned, the cargo was lost and both the scow and the steamer were damaged. The steamship owner sued Brady on the theory that damage to the steamer resulted from negligent loading of the scow. Jacobus, Beer, and the scow owner were impleaded under the then Admiralty Rule 59. At that point, the scow owner commenced a limitation proceeding, in which all other parties filed claim. The answers of these claimants alleged an unseaworthy condition of the scow. Cargo-owner Beer by answer alleged liability on the part of Jacobus, who, in turn, with the vessel owner, alleged that the fault of stevedore Brady had caused the damage. The District Court decree exonerated the owner of the scow, held that the stevedore's negligent unloading was the sole cause of the accident, and that Beer, having employed the stevedore, was primarily responsible to the vessel. No recovery was allowed the scow owner except for the costs of the litigation. The Second Circuit concluded that the loading condition of the Adah was so unstable as to permit her to capsize, and that Beer was properly held responsible to the steamer for negligence in removal of the cargo. As to the argument that the District Court committed error in not only absolving the Adah from blame, but in going further in fixing blame upon Brady and Beer "for the loss and injury in respect of which the Adah filed this petition," the Court said:

> "Whether it was necessary, in absolving the Adah, to fix blame on some one else, is a question we need not decide. Nor are we concerned with the inquiry whether the court could have compelled some of the parties to this appeal to come into the limitation proceedings. It is enough that they did come in, and made parties of themselves. Some of them (perhaps) came in voluntarily, but (as hereinbefore shown) all deliberately raised issues with each other,

as well as with the petitioner, Fox, and litigated those issues at great length.

"Having become parties, they are bound by the decree entered in the suit wherein they are parties.

" 'Parties in the larger legal sense are all persons having a right to control the proceeding, to make defense, to adduce and cross-examine witnesses, and to appeal from the decision if an appeal lies.' (Citing Greenleaf on Evidence)

"All the persons, firms, and corporations before this court in this matter fully respond to this definition. How or why they became parties is immaterial; they have had their day in court, and their relative rights have in substance been properly adjudicated."

This determination points clearly to the conclusion that, in a limitation action, the District Court has jurisdiction to determine, not only the rights that exist between the limitation petitioner and the several claimants but also the rights as among the claimants.

The case of *The Steel Inventor*, reported in the District Court at 1925 A. M. C. 226, and in the Court of Appeals for the Second Circuit, 24 F. 2d 657 and 43 F. 2d 958, as reviewed at length in the brief submitted by the United States, stands for affirmance by the Court of Appeals for the Second Circuit of the principle established in *The Adah*. See also *The Clio-The Springhill*, 1948 A. M. C. 757.

Moore-McCormack Lines v. *McMahon*, 235 F. 2d 142, involved a situation wherein a limitation petitioner filed cross-libels against certain limitation-fund claimants, and the District Court sustained exceptions to those cross-libels on the ground, in part, that they were not properly filed in the limitation proceedings. As to this, in reversing the decree of the lower court, the Court of Appeals for the Second Circuit said, at p. 143:

"We think the court was in error in its view of admiralty procedure. While the admiralty rules do not specifically regulate the practice as to cross-libels,

Admiralty Rule 50, 28 U. S. C., providing for security for costs for a cross-libel 'filed upon any counterclaim arising out of the same contract or cause of action for which the original libel was filed,' has been taken as authorizing such libels arising out of the same contract or cause of action as that sued upon. The required or suggested condition is clearly fulfilled here. In fact all the various claims to be considered arise out of the one accident and loss as a single cause; and the testimony must be either identical or greatly overlapping, so much so that economy of trial litigation suggests the desirability of one trial only.' And we think our previous holding, In re United States Steel Products Co., 2 Cir., 24 F. 2d 657, 659 and The Steel Inventor, 2 Cir., 43 F. 2d 958, 961, certiorari denied, Bell v. United States Steel Products Co., 283 U. S. 819, 51 S. Ct. 344, 75 L. Ed. 1435, are direct authority for this course. The court below distinguished the cross-libels there against cargo claims in limitation of liability proceedings as being against the *res*, while the present claims were said to arise out of the relationship of the parties. But we see no basis in reason or the authorities for such a distinction; and none was drawn in the recent persuasive decision of Judge Dobie for his court in British Transport Commission v. United States, 4 Cir., 230 F. 2d 139, 143-145, upholding cross-claims in limitation procee lings. Judge Clancy said that we 'know of no authority that permits such an alleged cross-libel.' As stated, we think there is authority; but in any event, approach to modern admiralty as to modern civil procedure should be to permit convenient practice where we know of no authority that forbids."

This Court in 1872 published Admiralty Rules 54, 55, 56 and 57, which were amended in 1920 to become Rules 51, 52, 53, 54 and 55, and which today are the same.

These statutes have been liberally construed by this Court to carry out the broad principle declared by Chief

Justice Taft in *Hartford Accident and Indemnity Company* v. *Southern Pacific Railroad Company*, 273 U. S. 207, of disposing all sides of a multi-cornered dispute in an equitable manner.

Limitation or exoneration is merely a statutory defense raised by the shipowner which may permit him partial or complete relief from all of his debts. In the same way the bankruptcy court grants relief to the debtor by marshaling all of his assets, paying off his debts to the limit of his assets, and, within certain limits, relieving him of any further claims on past indebtedness.

Each claim in the limitation proceedings is brought as a libel would be brought. Each claimant has the same standing as any libelant, and is therefore subject to the same responsibilities as any other libelant who sues jointly or whose suit is consolidated with another because arising from the same state of facts.

A petition for limitation may be sought either before or after libels have been filed against the vessel owner. In the instant case a petition for limitation was filed before any libels were filed. If, on the other hand, the British Transport Commission or any other claimant had filed a libel in the district where the vessel was found, which could readily have been done, the present confusion over the question of cross-claims would not have occurred. It appears clear that the learned district judge, as well as the Court of Appeals for the Fifth Circuit on whom he relied, see *Department of Highways* v. *Jahncke Service*, 174 F. 2d 894, (1949), failed to make this distinction. The petition for limitation does not change the form of the action, which is fundamentally a consolidated suit by various libelants against one respondent. The petition merely sets forth the relief prayed for—limitation of liability. Exoneration, as in any answer, is also sought. Under Admiralty Rule 56 the many-cornered controversy is easily settled in one proceeding.

The liberal joinder of actions by the same parties is approved in *Benedict on Admiralty*, Sixth Edition, Volume 2, at pp. 39-40:

> "While the Supreme Court has left open the general question whether joinder of proceedings is proper, *The Corsair*, (1891), 145 U. S. 335, the lower courts have been liberal in sustaining libels which join causes *in rem* and *in personam*, (citation omitted) as indeed would seem only proper in view of the fact that in any instances the broadest concourse of parties can be compelled by a petition for limitation of liability, embracing causes of action both *in rem* and *in personam*, and in view of the further fact that impleader of third parties is freely encouraged under the 56th Rule."

The same reasoning should permit all co-libelants or any other person who may be liable for the occurrence in question to be brought in to avoid multiple and costly litigation.

In *Petition of Texas Co.*, 81 F. Supp. 758, Judge Leibell declined to grant process *in rem* and *in personam* to the petitioner against the opposing claimant at that time but stated that petitioner was entitled to an answer to the petition for limitation and that if the vessels were found equally at fault the claimant would be entitled to only half damages and petitioner could settle, by way of contribution, one-half of the amount paid to the other claimants. The practical result obviously is the same as if Rule 56 had been followed. In the instant case it is inequitable for the DUKE OF YORK, found solely at fault, to withdraw from the proceedings and avoid liability in this jurisdiction.

This equitable principle has been fully recognized by this Court in the case of *Alexander* v. *Hillman*, 296 U. S. 222. That case arose by an equity suit brought by receivers of a certain company in West Virginia for the purpose of winding up the affairs of the company and the disposition of its assets. Certain officers of the corporation who were not

served with process appeared as respondents and presented their claims. The receiver of the company then filed various counter-claims against the officer-respondents and prayed for affirmative relief against them. This affirmative relief was allowed by the Court, which said at page 239:

> "The ancillary bill is not an original bill for the commencement of a suit. That it was not so intended is shown by the fact that process was not prayed or issued. While in form not inappropriate for commencement of suit, it was in fact formulated and filed to serve as a pleading in the main suit, to put respondents to proof of their claims and to assert the right to affirmative relief. Treating their established forms as flexible, courts of equity may suit proceedings and remedies to the circumstances of cases and formulate them appropriately to safeguard, conveniently to adjudge, and promptly to enforce substantial rights of all the parties before them.
>
> * * *
>
> "Respondents' contention means that, while invoking the court's jurisdiction to establish their right to participate in the distribution, they may deny its power to require them to account for what they misappropriated. In behalf of creditors and stockholders, the receivers reasonably may insist that, before taking aught, respondents may by the receivership court be required to make restitution. That requirement is in harmony with the rule generally followed by courts of equity that, having jurisdiction of the parties to controversies brought before them, they will decide all matters in dispute and decree complete relief. (Citing Cases) * * *"

These same principles should apply in an admiralty court in a limitation-of-liability proceeding. As we have stated, the admiralty court in such a proceeding is exercising equitable jurisdiction and has authority to settle all the matters

and things in controversy concerning the parties which are before it.

In the instant case all of the claimants, including British Transport Commission, have filed their claims and submitted themselves to the jurisdiction of the court to determine all of the issues between them.

This jurisdiction carries with it the power of the court to grant affirmative relief on a cross-claim against a claimant, who in this case is British Transport Commission. Any other interpretation would be most inequitable. Here we have many claimants from many parts of the world, who have filed their claims in the limitation proceedings instituted by the United States of America. All of the evidence concerning the collision involved herein has been presented both by petitioner and the claimant, British Transport Commission.

The merits of the case have been adjudicated.

It would work an undue hardship on all of the claimants herein not to have their rights against the British Transport Commission settled at this time. To hold otherwise would mean that the various claimants would have to pursue their causes of action against the British Transport Commission in another forum at great expense and at a time when perhaps much of the evidence necessary to support their claims would have been lost due to the lapse of time.

As a practical matter as well as an equitable one, these claimants should be allowed to implead the British Transport Commission. The Second Circuit in *Algoma Central & Hudson Bay Ry. Co.* v. *Great Lakes Transit Corporation, et al.*, C. C. A. 2, 86 F. 2d 708, has stated that a determination in a limitation-of-liability proceeding will be *res adjudicata*. This position is also supported by *The Adah*, above, wherein the Court stated that all parties to a proceeding for limitation of liability who appear voluntarily or

otherwise and join issues with the petitioners and between themselves are bound by the decree. If the issue of liability in the instant case is *res adjudicata* and all the parties herein bound thereby, then the District Court should also be empowered to decide the issues of damages as between all the parties before it. This can be accomplished only by the allowance of an impleading petition under the 56th Admiralty Rule.

CONCLUSION

The intervening claimants respectfully submit that the Court of Appeals was correct in its conclusion that these claimants in the limitation proceeding may rightfully file impleading petitions against their co-claimant the British Transport Commission, whereby the District Court may be empowered to decree affirmatively in their favor.

Respectfully submitted,

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